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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,804	07/17/2003	Nicholas A. Restifo	4111-030950	1460

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EXAMINER

KING, ANITA M

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 04/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/621,804

Applicant(s)

RESTIFO, NICHOLAS A. 

Examiner

Anita M. King

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-14 and 16-20 is/are rejected.
- 7) ☒ Claim(s) 4 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

This is the first office action for application number 10/621,804, Portable Containment Unit, filed on July 17, 2003.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,342,007 to LaPlante. LaPlante discloses a portable containment unit, comprising: a cross member (22); at least one support member (16) attached to and extending away from the cross member and configured to support the cross member above a ground surface; at least one receptacle (32) positioned on the cross member and configured to receive at least one object therein; wherein the cross member further comprises at least one recessed portion (27) configured to support at least a portion of at least one object thereon; wherein the cross member comprises two recessed portions (24 & 27) on opposite sides of the cross member; wherein the at least one support member further comprises a positioning element (15) configured to removably position the cross member in a substantially parallel position with respect to the ground surface; wherein the cross member further comprises at least one receptacle orifice (25) and the at least one receptacle is configured to slide within the receptacle orifice, such that the receptacle is engaged within the receptacle orifice; wherein the at least one receptacle includes a ridge portion (48), the ridge portion configured to rest upon an upper edge area of the receptacle orifice, thereby removably

securing the receptacle within the receptacle orifice; and wherein the at least one receptacle is sized such that it can receive one of a cup, a can, a glass, and a liquid container.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 6, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent D163,617 to Lilja in view of U.S. Patent 5,330,145 to Evans et al., hereinafter, Evans. Lilja discloses a portable containment unit, comprising: a cross member; at least one support member attached to and extending away from the cross member and configured to support the cross member above a ground surface; wherein the cross member further comprises at least one recessed portion configured to support at least a portion of at least one object thereon; wherein the cross member comprises two recessed portions on opposite sides of the cross member; wherein the at least one support member further comprises a positioning element configured to removably position the cross member in a substantially parallel position with respect to the ground surface; wherein the positioning element comprises a sharpened tip portion positioned on a distal end of the support member and configured to allow at least a portion of the support member to penetrate the ground surface, thereby securely positioning the cross member with respect to the ground surface; wherein the cross member further comprises at least one receptacle orifice (25) and the at

lest one receptacle is configured to slide within the receptacle orifice, such that the receptacle is engaged within the receptacle orifice.

Lilja further discloses that the cross member is capable of supporting a receptacle, wherein the receptacle is sized such that it can receive one of a cup, a can, a glass, and a liquid container. Lilja discloses the claimed invention except for the limitation of at least one receptacle positioned on the cross member and wherein the at least one receptacle includes a ridge portion. Evans teaches a cup holder (B) having a receptacle orifice (12) and a receptacle (A) positioned on the holder and configured to receive at least one object, wherein the receptacle has a ridge portion (28) configured to rest upon an upper edge area of the receptacle orifice. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the unit in Lilja to have included a receptacle as taught by Evans for the purpose of providing an adapter for enabling a traditional cup holder to support a relatively large drinking vessel.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over LaPlante in view of U.S. Patent 6,575,417 to Krommenakker. LaPlante further discloses that the positioning element has is a threaded bolt (15). LaPlante discloses the claimed invention except for the limitation of the positioning element having a sharpened tip portion. Krommenakker teaches a beverage container holding device (10) having a support member (15) comprising a positioning element including a sharpened tip portion (16) on a distal end of the support member, and wherein a body member (11) of the beverage container holding device has a coupler portion (22) engaging threaded end (24) of the support member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the coupler portion of the body member to have been threaded and to

have the proximal end of the support member to have been a nut for receiving the threaded end of the body member since such a modification would have merely involved a reversal of parts and would not have produce any unexpected results. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the support member in LaPlante to have included the support member as taught by Krommenakker for the purpose of providing an alternative means for supporting the unit in relation to the ground surface.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over LaPlante in view of U.S. Patent 5,924,659 to Babcock. LaPlante discloses the claimed invention except for the limitation of the positioning element being a plate member. Babcock teaches a apparatus for grasping and holding containers of various sizes and shapes, the apparatus including telescoping support arms (30 & 32) and a positioning element comprises a plate member (20) positioned on a distal end of the support member and configured to balance the apparatus above the plate member via the support member, thereby securing positioning the cross member with respect to the ground surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the support member in LaPlante to have included the support member as taught by Babcock for the purpose of providing an alternative support member for positioning the unit in relation to various types of ground surfaces.

Claims 8-10, 14, and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lilja combined with Evans and in further view of U.S. Patent D464,499 to Gharst. Lilja combined with Evans disclose the claimed invention except for the limitation of two support members attached to the cross member. Gharst teaches a stand having a cross member

including a receptacle and having two support members attached to and extending away from opposite ends of the cross member, wherein each support member includes a positioning element configured to removably position the cross member in a substantially parallel position with respect to the ground surface, and wherein the positioning elements each comprise a tip portion positioned on a distal end of each of the support members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the tip portions of the support members in Gharst to have been sharpened as taught by Lilja for the purpose of providing a more efficient means of penetrating the ground surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the unit in Lilja combined with Evans to have included two support members as taught by Gharst for the purpose of providing a more stable means of supporting the unit in relation the ground surface.

Allowable Subject Matter

Claims 4 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 2,877,828 to Barnette, Jr.

U.S. Patent 3,141,644 to Baird

U.S. Patent 4,176,819 to Lowe

U.S. Patent 4,407,475 to Gossage

U.S. Patent 4,702,445 to Ivory

U.S. Patent 4,854,468 to Dahlquist, II et al.

U.S. Patent D366,372 to Skarda, Jr.

U.S. Patent 5,647,075 to Perkins

U.S. Patent 5,713,546 to Auspos


U.S. Patent 6,705,240 to Block et al.

Barnette, Jr. discloses a folding seat having a platform including a receptacle and a sharpened tip, positioning element. Baird discloses a trashcan holder having a cross member with a receptacle positioned thereon and a support member having a sharpened tip at a distal end. Lowe discloses a portable fishing rod holder having a plurality of cross members including receptacle orifices and a support member. Gossage discloses a table having a plurality of receptacle orifices and a support member having a sharpened tip on a distal end thereof. Ivory discloses a self-adjusting bag support having a support member with a sharpened tip. Dahlquist, II et al. disclose a cup holder adaptive device. Skarda, Jr. discloses a ground inserted beach table having a plurality of receptacles. Perkins discloses a table for a hammock stand. Auspos discloses a tray and beverage container holder for insertion into a ground surface. Block et al. disclose a portable table for outdoor use including a support member for insertion into a ground surface.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anita M. King
Primary Examiner
Art Unit 3632

April 13, 2004